IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 313 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KHIMABHAI KACHARABHAI DABHI

Appearance:

1. LETTERS PATENT APPEAL No. 313 of 1986
MR. L.R. POOJARI, AGP, for the State
NOTICE UNSERVED for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 07/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

In this matter in the last 15 years of pendency of appeal, the respondent No. 1 has not been served. Ordinarily, we would have dismissed the appeal for non-prosecution. However, we allowed the learned Assistant Government Pleader to argue the appeal on merits with an understanding that if any substance is found in this appeal which is hibernating so long we might still give a chance to serve the respondent No. 1. However, as will be seen hereafter there is absolutely no merit in the appeal.

2. The appeal is directed against the order of the learned Single Judge dismissing First Appeal No. 839 of 1986 which was preferred against the judgement and decree of the Court of Second Joint Civil Judge (S.D.), Ahmedabad (Rural) in Special Civil Suit No. 4 of 1984 passed on 30.11.1985 awarding a sum of Rs. 25,101/- with interest at the rate of 6% per annum in respect of death of the plaintiff's wife which resulted due to negligence on the part of the doctor who performed tubectomy.

3. From the record it appears that the plaintiff deposed at Exh. 20 that his wife was admitted in Mahatma Gandhi Hospital, Viramgam, for tubectomy operation which was performed by Dr. Manubhai Soni. According to him she died a couple of days after the operation in the hospital and that she died due to negligence and carelessness on the part of the doctor who performed the operation. He has deposed that she was 23 years old and was earning Rs. 400/- to 450/- per month. Her death certificate was produced at Exh. 25. Despite lengthy cross-examination, he was not shaken the material aspects of his version as held by the trial Court. He examined one Vadilal Manilal Desai at Exh. 29 in support of the fact that the deceased was a labourer working as a daily wager in the institution in which this witness was serving. Her daily wages card was produced at Exh. 30.

4. Dr. Manubhai Soni in his deposition at Exh. 32 admitted the fact that he had operated Asuben on 16.8.1979 and that she died on 24.8.1979. He produced her case papers. It is significant to note that in his deposition he admitted that before performing tubectomy operation he had not obtained any blood report of Asuben. Moreover, after her death, no post-mortem was performed. It has come in his evidence that there was pus oozing out from the surgical wound and she was getting pain in the said wound which was caused while performing tubectomy.

5. The evidence which is on record clearly establishes that the deceased was hale and hearty before her death and that she was serving as daily wager. It is also established that she died as a result of infection in the surgical wound and that she died in the hospital during treatment. Her blood sample as not taken before performing the operation in order to ascertain on the basis of blood report whether the operation could safely be performed or not. Nothing is brought on record to show whether any care was taken immediately after the operation to ensure that there is no pus formation at the site of the surgical wound. We may recall here the observation made by the Supreme Court in the case of STATE OF HARYANA VS. SANTRA reported in AIR 2000 SC 1888 that every doctor who enters into the medical profession has a duty to act with a reasonable degree of care and skill. There is an implied undertaking by a member of the medical profession that he would use a fair, reasonable and competent degree of skill. The fact that blood report was not obtained before performing the operation by doctor Manubhai Soni itself suggests the carelessness with which the operation was performed. The risk element in tubectomy operation is usually not very high and when a young, healthy woman has died soon after the operation due to sepsis that developed in the surgical wound, in absence of any indication of proper post-surgical treatment having been given to her, the only inference that can be drawn in the facts of the present case is that there was sheer negligence on the part of medical man which resulted in death of young lady.

6. The amount of Rs. 25,101/- awarded by way of damages is on a lenient side and has a full justification in view of the fact that the deceased was a daily wager as established from the evidence on record.

7. We hold that the learned Single Judge was perfectly justified in dismissing the First Appeal and confirming the judgement and decree passed by the trial Court. This Letters Patent Appeal is, therefore, dismissed with no order as to costs.

(R.K. ABICHANDANI, J)

(K.M. MEHTA, J)

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